

FILED  
WILLIAMSON COUNTY  
CLERK

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE  
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

OCT 29 PM 4:16

ENTERED 10-30-07

STATE OF TENNESSEE, *ex rel.* )  
ROBERT E. COOPER, JR., ATTORNEY )  
GENERAL and REPORTER, )

Plaintiff, )

v. )

ROLAND FROEHLIG, a.k.a. Rollie Froehlig, )  
THEODORE HOWES, a.k.a. Ted Howes, )  
NATIONAL FULFILLMENT, INC., and )  
ENTERTAINMENT AMERICA, INC., )

Defendants. )

JURY DEMAND

No. 33293

AGREED INTERIM ORDER REGARDING  
STATE'S MOTIONS FILED ON OCTOBER 19, 2007

1. Come the State of Tennessee through counsel, Deputy Attorney General Cynthia E. Kinser (Mills) and Assistant Attorney General Brant Harrell and Defendants Theodore Howes, National Fulfillment, Inc. and Entertainment America, Inc., through counsel, James Thomas and David Herbert, with Theodore Howes personally present in the courtroom and announce they have agreed to this Interim Agreed Order regarding the State's Motions filed on October 19, 2007. This Agreed Interim Order will remain in effect until otherwise ordered by the Court. After reviewing the filings and hearing counsel and the announced agreement of the parties:

281 647

900  
DD

2. **IT IS ORDERED, ADJUDGED AND DECREED** that because Defendant National Fulfillment, Inc. has represented to the State of Tennessee that it will file a Chapter 7 bankruptcy, Defendant National Fulfillment, Inc. shall file, in the United States Bankruptcy Court for the Middle District of Tennessee, a notice converting its Chapter 11 bankruptcy case to a Chapter 7 bankruptcy no later than close of business on Friday, November 2, 2007. If Defendant National Fulfillment, Inc. does not file the Chapter 7 bankruptcy, the State is hereby granted an immediate expedited hearing on the State's Motion for Appointment of a Receiver and the State's Renewed Motion for an Asset Freeze before the Honorable Judge Davies on November 9, 2007 at 9:00 a.m. at 135 Fourth Avenue South, Franklin, Tennessee 37065. The State also has the right to seek an earlier expedited hearing if it deems exigent circumstances exist.

3. **IT IS SO ORDERED, ADJUDGED AND DECREED** that if the Chapter 7 Trustee does not include Defendant Entertainment America, Inc. and/ or Entertainment America of Tennessee, Inc. in the entities covered by his/her trustee duties and elect to include them in the Chapter 7 bankruptcy, then those entities shall be required to file the sworn accounting of known assets and liabilities including but not limited to both adjudicated and unadjudicated court actions, and supply all bank statements during the past three (3) months as sought by the State of Tennessee's Renewed Motion for Asset Freeze filed on October 19, 2007. Said accounting and bank statements shall be filed with this Court and a copy provided to the Attorney General's Consumer Advocate and Protection Division to the attention of Brant Harrell within five (5) business days of the Trustee's decision.

4. **IT IS SO ORDERED, ADJUDGED AND DECREED** that the State's Motion to Substitute Parties shall be heard on Friday, November 9, 2007 at 9:00 a.m. at 135 Fourth Avenue South, Franklin, Tennessee 37065. No further service shall be required on any party or the personal representative.

5. **IT IS SO ORDERED, ADJUDGED AND DECREED** that in order for relief to be granted against Entertainment America of Tennessee, Inc., the State must file a motion to amend to add that party. Defendants have agreed not to file an objection to the State's Motion to Amend the Complaint and/or to Add Entertainment America of Tennessee, Inc. as a party to the lawsuit and the State's motion may be heard on Friday, November 9, 2007 at 9:00 a.m. at 135 Fourth Avenue South, Franklin, Tennessee 37065.

6. In order to protect consumers and the public at large and consistent with its statutory police and regulatory powers, **IT IS SO ORDERED, ADJUDGED AND DECREE THAT** Defendant Theodore Howes, Defendant Entertainment America, Inc, and Defendant National Fulfillment, Inc., their officers, directors, employees, agents, successors and assigns, and other persons in active concert or participation with Defendant Theodore Howes, Defendant Entertainment America, Inc., and Defendant National Fulfillment, Inc. who receive actual notice of this Interim Agreed Order, are affirmatively required to:

Store, safeguard, or otherwise protect computers, receipts, credit card or debit card processing terminals, or any other piece of equipment, any documents, or materials that contain credit card or debit card information, other billing or payment information of consumers, or other personally identifying information such as

Social Security numbers.

7. In order to protect consumers and the public at large and consistent with its statutory police and regulatory powers, IT IS SO ORDERED, ADJUDGED AND DECREE THAT Defendant Howes, Defendant Entertainment America, Inc, and Defendant National Fulfillment, Inc., their officers, directors, employees, agents, successors and assigns, and other persons in active concert or participation with Defendant Theodore Howes, Defendant Entertainment America, Inc., and Defendant National Fulfillment, Inc. who receive actual notice of this Interim Agreed Order, and shall be prohibited and enjoined from:

Selling, distributing, transmitting, or otherwise transferring credit card or debit card processing terminals, or any other piece of equipment, any documents, or materials that contain credit card or debit card information or other billing or payment information of consumers.

On the day of entry of this Agreed Interim Order, Defendants' counsel agree to provide notice to their clients of this Order and no further service shall be required by the State of Tennessee.

8. Both the State and the Defendants consent to this Interim Agreed Order as evidenced by their signatures below. The Defendants agree to waive service of this Order.

9. The Agreed Interim Order was announced at the Court's hearing on October 29, 2007 at 9:00 a.m. and shall be effective upon entry.

10. Facsimile copies or PDF copies of the parties counsel's signatures shall serve as

originals for the purpose of entering this Agreed Interim Order.

11. Pursuant to Tenn. Code Ann. § 47-18-2106(g), no court costs or litigation fees or costs of any sort can be taxed against the State.

12. Pursuant to Tenn. Code Ann. § 47-18-2105(c), the State is not required to post a bond for the issuance of this Order and the injunction contained herein.

13. This Order does not supplant any previous Orders in this matter. All other Orders remain in full force and effect.

**IT IS SO ORDERED.**

ISSUE DATE: 10/30/07 m.

  
CHANCELLOR R. E. LEE DAVIES

JOINTLY APPROVED FOR ENTRY:

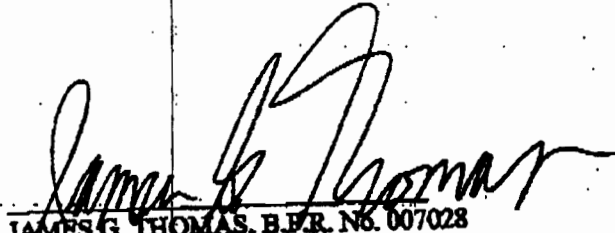


BRANT HARRELL, B.P.R. No. 24470  
Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
425 Fifth Avenue, North  
Nashville, TN 37243  
(615) 532-9299 (phone)  
(615) 532-2910 (fax)  
E-mail: brant.harrell@state.tn.us

*Attorney for Plaintiff, the State of Tennessee*

Oct 29 2007 13:25

P.08



JAMES G. THOMAS, B.B.R. No. 007028

Neal & Harwell, PLC

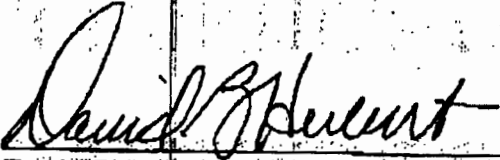
150 Fourth Avenue, North

Nashville, TN 37219-2498

(615) 244-1713 (phone)

(615) 726-0573 (fax)

E-mail: jthomas@neal&harwell.com



David B. Herbert, (#3482)

Ortale, Kelley, Herbert &amp; Crawford

200 Fourth Avenue North, 3<sup>rd</sup> Floor

Nashville, TN 37219

(615) 256-9999 (phone)

(615) 726-3261 (fax)

*Attorney for National Fulfillment, Inc., Entertainment America, Inc. and  
Theodore Hovess*

## CLERK'S CERTIFICATE

I hereby certify that a true and exact copy of  
foregoing has been mailed or delivered to  
all parties or counsel of record.

10-30-07 *Sharon A. Barton, dep.*  
Date Clerk & Master

281 654